

EXHIBIT 1

From: Daniel Zemel
To: Roper, Meryl
Cc: Elizabeth Apostola; Toro, John; Stein, Kate
Subject: Re: Casas
Date: Tuesday, September 8, 2020 10:55:05 PM
Attachments: [image001.png](#)

External Sender

Meryl,

Its not my intent to brief this issue with you. Here is a case allowing a subpoena for depositions by the arbitrator. [Matter of Roche Molecular Sys. Inc. \(Gutry\) 2018 NY Slip Op 28125, ¶ 7](#), 60 Misc. 3d 222, 231, 76 N.Y.S.3d 752, 759 (Sup. Ct.) and [ImClone Sys. Inc. v Waksal \(22 AD3d 387, 802 NYS2d 653 \[1st Dept 2005\]\)](#). I'm familiar with the case law on the other side.

Documents will not be sufficient because the documents aren't self explanatory and frankly there are some questions that even someone with as much experience as I have can't answer by looking at the documents. Further, there is no question that the arbitrator has a right to bring in Equifax for the hearing itself (remotely w/in 100 miles) so one option is definitely to advise the arbitrator that Equifax will need to be subpoenaed to testify in person at the hearing. Though I imagine its easier for a witness to be deposed than examined at a hearing.

I've presented my case to the arbitrator about why we need an Equifax deposition subpoena. He agreed. Clearly there is a need. We haven't been agreeing on much as of late so I won't be surprised if we don't agree here. But I need to know Equifax's position so I can take the necessary next steps of enforcement. Respondent, the arbitrator, and I are all waiting to know whether the case can proceed or needs to be put on ice while we seek court relief.

On Thu, Sep 3, 2020 at 2:32 PM Roper, Meryl <MRoper@kslaw.com> wrote:

Daniel,

Based on our reading of the case law, an arbitrator does not have authority under the FAA to subpoena pre-hearing deposition testimony from a third party. If you are aware of authority that supports your position that such testimony is allowed, please provide it to us and we'll be happy to review it and engage in a further discussion with Equifax.

Also, please let us know why documents will not be sufficient for Equifax as a non-party when it doesn't appear that Plaintiff is seeking a deposition of Verizon in the arbitration.

Regards,

Meryl

Meryl W. Roper

Counsel

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KING & SPALDING

From: Daniel Zemel <dz@zemellawllc.com>
Sent: Thursday, September 3, 2020 1:51 PM
To: Roper, Meryl <MRoper@KSLAW.com>
Cc: Elizabeth Apostola <ea@zemellawllc.com>; Toro, John <JToro@KSLAW.com>; Stein, Kate <KStein@kslaw.com>
Subject: Re: Casas

External Sender

Meryl,

I need to make your position to the arbitrator clear. Are you refusing to provide any deposition testimony in this matter no matter what? Document's alone will not due for our purposes.

On Thu, Sep 3, 2020 at 1:48 PM Roper, Meryl <MRoper@kslaw.com> wrote:

Daniel:

This email is to respond substantively to the subpoena issued in the arbitration involving Plaintiff and Cellco Partnership (d/b/a Verizon Wireless), to which Equifax is not a party. We ask that Plaintiff withdraw the subpoena for three reasons.

First, the Federal Arbitration Act (“FAA”) is clear that the power of an arbitrator to issue a subpoena to a non-party is limited. Specifically, Section 7 of the FAA states, in pertinent part, that an arbitrator may only summon a person to attend an arbitration hearing and to bring to such hearing documents deemed material in the case. *See* 9 U.S.C.A. § 7. The plain language of the statute prohibits pre-hearing discovery from non-parties, whether that discovery is documentary or testimonial in nature. *See Managed Care Advisory Group, LLC v. CIGNA Healthcare, Inc.*, 939 F. 3d 1145, 1159 (11th Cir.

2019) (referencing rulings in the Second, Third, Fourth, and Ninth Circuits). For example, the Eastern District of Louisiana has held that Section 7 of the FAA does not allow for the issuance of a subpoena seeking the production of documents from a non-party who has not been summoned to testify as a witness before the arbitrator. *See Chicago Bridge & Iron Co. N.V. v. TRC Acquisition, LLC*, No. CIV.A. 14-1191, 2014 WL 3796395, at *3 (E.D. La. July 29, 2014). The Northern District of Texas has agreed, holding that “[Section] 7 of the FAA does not authorize arbitrators to compel production of documents from a non-party, unless they are doing so in connection with the non-party’s attendance at an arbitration hearing.” *See Empire Fin. Grp., Inc. v. Penson Fin. Servs., Inc.*, No. CIV.A. 3:09-CV-2155D, 2010 WL 742579, at *3 (N.D. Tex. Mar. 3, 2010). Still another federal court has held that an arbitrator lacks the power to issue subpoenas for pre-hearing depositions and document productions from non-parties. *See Kennedy v. Am. Express Travel Related Servs. Co.*, 646 F. Supp. 2d 1342, 1344 (S.D. Fla. 2009) (citing to *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 407–12 (3d Cir. 2004)). *See also McTammany v. Found. Capital Partners L.P.*, No. 815MC0006DOCVBKX, 2015 WL 12781404, at *3 (C.D. Cal. May 1, 2015) (denying Plaintiff’s motion to compel a non-party deposition because the arbitrator’s power under Section 7 does not extend to ordering non-parties to appear for pre-hearing depositions). The subpoena issued to Equifax here was not for attendance and/or document production at an arbitration hearing, but rather for pre-hearing discovery. It is therefore not enforceable under Section 7 of the FAA.

Second, as set forth in your email of August 31, the arbitrator issued no ruling granting leave to obtain discovery against Equifax, but only signed a subpoena prepared by Plaintiff. It is therefore unclear whether Plaintiff has even obtained leave to take documentary and deposition discovery from Equifax, as required under the orders entered by the Arbitrator.

Third, it is my understanding that the only pre-hearing discovery that has been conducted so far has been the limited production of documents between the parties, and no deposition testimony. It would be overly broad and unduly burdensome for Equifax, as a non-party, to be compelled to provide testimony when the parties to the arbitration are not engaging in the same type of discovery.

Please confirm that the subpoena for documents and testimony is withdrawn, and that the deposition purportedly scheduled for September 11, 2020 is off calendar. We are, however, available to engage in a further discussion to determine if there is a potential compromise that we could reach on a limited document production notwithstanding the above.

Regards,

Meryl

Meryl W. Roper

Counsel

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KING & SPALDING

From: Daniel Zemel <dz@zemellawllc.com>
Sent: Monday, August 31, 2020 11:16 AM
To: Roper, Meryl <MRoper@KSLAW.com>
Cc: Elizabeth Apostola <ea@zemellawllc.com>; Toro, John <JToro@KSLAW.com>; Stein, Kate <KStein@kslaw.com>
Subject: Re: Casas

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Meryl,

There is no such order. The Arbitrator signed the subpoena.

On Mon, Aug 31, 2020 at 6:38 AM Roper, Meryl <MRoper@kslaw.com> wrote:

Daniel,

Thanks for sending along the scheduling and protective orders. Will you also please send along any orders from the arbitrator that granted leave for Plaintiff to serve the subpoena on Equifax?

Regards,

Meryl

Meryl W. Roper

Counsel

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KING & SPALDING

From: Daniel Zemel <dz@zemellawllc.com>
Sent: Wednesday, August 26, 2020 5:11 PM
To: Roper, Meryl <MROper@KSLAW.com>
Cc: Elizabeth Apostola <ea@zemellawllc.com>; Toro, John <JToro@KSLAW.com>; Stein, Kate <KStein@kslaw.com>
Subject: Re: Casas

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Meryl,

See attached Orders.

On Wed, Aug 26, 2020 at 1:58 PM Roper, Meryl <MROper@kslaw.com> wrote:

Daniel and Elizabeth,

I'm writing to follow up on the below emails regarding the subpoena to Equifax in the pending arbitration between Plaintiff and Cellco Partnership. I'd appreciate it if you would send me copies of all orders relating to scheduling and deadlines in the arbitration as well as any confidentiality/protective order governing the production of documents and designation of testimony. Once I've received and reviewed such orders, Equifax will be in a position to determine the scope of any obligations to produce documents and/or provide deposition testimony. Please let me know if you will send those along.

Also, as a matter of courtesy, and without waiving any objections as to the legitimacy of a deposition for an Equifax corporate representative, I wanted to let you know that September 11 will not work for either me or my client. Any discussion of

the timing of an Equifax deposition, if one is to occur, will need to take place once Equifax is better able to understand the scope and breadth of its obligations in the arbitration.

Regards,

Meryl

Meryl W. Roper

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KING & SPALDING

From: Roper, Meryl

Sent: Monday, August 24, 2020 11:55 AM

To: 'Daniel Zemel' <dz@zemellawllc.com>; Elizabeth Apostola <ea@zemellawllc.com>

Cc: Toro, John <jtoro@kslaw.com>; Stein, Kate <kstein@kslaw.com>

Subject: RE: Casas

Daniel,

I'll be handling the subpoena. I'll be back in touch later this week about it.

Regards,

Meryl

Meryl W. Roper

Counsel

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KING & SPALDING

From: Daniel Zemel <dz@zemellawllc.com>
Sent: Friday, August 21, 2020 10:13 AM
To: Roper, Meryl <MRoper@KSLAW.com>; Elizabeth Apostola <ea@zemellawllc.com>
Subject: Casas

External Sender

Meryl,

Will you be able to assist with this subpoena?

--

Daniel Zemel, Esq.

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